

Prepared by: John Randolph Parks
PIN: 6959-76-1872-000

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (the "Easement"), made this ____ day of December, 2006, between CLIFDEN, L.L.C., a Virginia limited liability company, as to a 2% undivided interest, and MT. JOY FARM, LIMITED PARTNERSHIP, also known as MT. JOY FARM, L.P., a Virginia limited partnership, as to a 98% undivided interest (collectively herein called "Grantor"), the BOARD OF SUPERVISORS OF FAUQUIER COUNTY, of the Commonwealth of Virginia ("Grantee"), whose address is 10 Hotel Street, Warrenton, Virginia 20186.

RECITALS

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth Virginia, and of local governments, by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 17, Title 10.1 of the Code of Virginia, as amended, at §§10.1-1701, authorizes county public bodies to acquire by purchase, gift, grant or otherwise title to or interests in real property that will provide a means for the preservation or provision of open space; and

WHEREAS, the Grantor is the owner in fee simple of the real property, known as a portion of Mt. Joy Farm, hereinafter described (the "Property"); and

WHEREAS, the Property possesses significant scenic, natural, and open-space values (the "Open Space Values"), the preservation of which will benefit the citizens of Fauquier County and Commonwealth of Virginia; and

WHEREAS, the Property is located within an area of Fauquier County which is designated as a Rural Agriculture (RA) and Rural Conservation (RC) District for zoning purposes and also is located on the “Scenic Roads, Areas & Rivers Map” (map 8.11 in the Fauquier County Comprehensive Plan);

WHEREAS, the Property lies within the Marshall/Warrenton Agricultural and Forestal District designated by the Board of Supervisors of Fauquier County, pursuant to Virginia Agricultural and Forestal Districts Act (§§ 15.2-4300 et seq. of the Code of Virginia; and

WHEREAS, the Property fronts on State Route 647 (Crest Hill Road), a designated Virginia Scenic By-way, and contributes to the scenic views enjoyed by the public therefrom;

WHEREAS, the Comprehensive Plan of Fauquier County, Virginia (1992-2010), as adopted by the Board of Supervisors, includes the following goals: “To sustain and enhance the quality of life of the County’s citizens”; “To recognize the county’s traditionally agricultural and rural character and the need for preservation of its open spaces and scenic beauty”; “To protect critical environmental resources and to maintain renewable natural resources so that they are not degraded but remain viable for future generations”; and “To protect and promote the agricultural industry”; and

WHEREAS, the Grantor and the Grantee desire to protect in perpetuity the Open Space Values herein specified; and

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the "Restrictions") will preserve and protect in perpetuity the "Open Space Values" of the Property, which values are reflected in the preceding paragraphs, the Grantee's evaluation of the Property, and the documentation of the condition of the Property as contained in its files and records; and

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open Space Values of the Property; and

WHEREAS, the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open Space Values of the Property, and the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this easement.

WHEREAS, the specific conservation values and Open Space Values of the Property are documented in a report to be kept on file at the offices of the Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties agree provides an accurate representation of the Property as of the effective date of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, the Grantee represents that the Grantee is a “qualified conservation organization,” as that term is defined in Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Code”); and

WHEREAS, the Grantor and the Grantee recognize the scenic, natural, agricultural and open-space character of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the placement of the Restrictions on the Property and with the transfer from the Grantor to the Grantee of the right to enforce the Restrictions and protect the Property, intending the grant of such Restrictions and rights to qualify as a “qualified conservation contribution” as that term is defined under Section 170(h) of the Code.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby give, grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of 103.315 acres, more or less, in the aggregate, described below, located on Virginia Route 647, Crest Hill Road in Marshall Magisterial District, Fauquier County, Virginia, near Marshall, Virginia, and herein referred to as the "Property":

ALL THAT certain parcel of unimproved land known as the south tract of Mount Joy Farm in the Marshall Magisterial District, Fauquier County, Virginia, Fauquier County Tax Map Section 40, Parcel 52, containing 103.3145 acres, more or less, more particularly shown on plat and survey of James G. Butler, Jr., Certified Land Surveyor, dated September 24, 1969, which is recorded in Deed Book 347, at Page 610 among the land records of Fauquier County, Virginia.

AND BEING a portion of the same properties collectively sometimes known as Mt. Joy Farm and conveyed to Clifden, L.L.C., as to a 2% interest, by Deed from Michael J. Manning

and Mary Jo Manning, husband and wife, dated December 18, 2002, recorded in Deed Book 995, at page 1634, in the aforesaid Clerk's office.

AND ALSO BEING a portion of the same properties collectively sometimes known as Mt. Joy Farm and conveyed to Mt. Joy Farm, Limited Partnership, as to a 98% undivided interest, by Deed from Michael J. Manning and Mary Jo Manning, husband and wife, dated December 18, 2002, recorded in Deed Book 995, at Page 1637 in the aforesaid Clerk's office.

The above-described tract is shown as PIN# 6959-76-1872 among the land records of Fauquier County and totals 103.15 acres, more or less, in the aggregate. The Property shall be considered to be one parcel for the purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated there under.

Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above.

ARTICLE I – EASEMENT

1. **PURPOSE.** The purpose of this Easement is to preserve and protect the conservation value of the Property in perpetuity by enforcing the restrictions imposed on the use of the Property by Article II, while allowing the Property to be used for all other uses by the owner as long as such uses do not interfere with the conservation value of the Property. The conservation value of the Property is its

value as open-space land as more specifically identified as the Open-Space Values described in the Recitals to this Easement which are hereby incorporated.

2. **DURATION.** This Easement shall be perpetual. It is an easement in gross which runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the Grantor and the Grantee, and their respective successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.
3. **NO PUBLIC ACCESS.** Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.

ARTICLE II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property to protect the Open-Space Values of the Property pursuant to the public policies set forth above. The acts that the Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. **DIVISION.** The Property shall not be divided or subdivided into, or separately conveyed as, more than two (2) parcels, one of which shall contain a minimum acreage of one hundred (100) acres. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

(i) The entire adjacent parcel is subject to a recorded open-space easement conveyed to Grantee, or other public body as defined in Section 10.1-1700 of the Code of Virginia; and

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Board of Grantee or the governing body of any successor in interest to the Grantee.

2. BUILDINGS AND STRUCTURES. No permanent or temporary buildings or structures may be built, maintained or replaced on the Property other than:

(i) One (1) primary single-family dwelling not to exceed a size of six thousand (6000) square feet of above ground enclosed living space on the Property, or on each parcel resulting from a subdivision of the Property in accordance with paragraph 1, and non-residential outbuildings or structures commonly and appropriately incidental thereto and sized appropriately for single family use;

(ii) One (1) secondary dwelling not to exceed a size of twenty five hundred (2500) square feet of above ground enclosed living space on the Property, or solely on any residue parcel of a minimum of one hundred (100) acres resulting from a subdivision of the Property in accordance with paragraph 1, provided that such dwelling shall be permitted by the laws and zoning ordinances of Fauquier County, Virginia, and non-residential outbuildings or structures commonly and appropriately incidental thereto and sized appropriately for single family use; and

(iii) Farm buildings or structures, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation value of the Property. For the purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 3(i).

(v) Private roads and underground utilities that serve permitted buildings or structures in this Paragraph 2, and unpaved farm or forest roads may be constructed and maintained on the Property or on any parcel subdivided therefrom.

(vi) In the event of subdivision of the Property as provided in paragraph 1 above, permitted dwellings shall be allocated among the resulting parcels, in the instrument creating the subdivision.

3. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited:

(i) Agriculture including animal husbandry, aquaculture, silviculture and equine activities, provided, however, that large-scale industrial or commercial operations such as wineries, race tracks or livestock feedlots are permitted only with the prior written approval of Grantee;

(ii) Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation value herein protected; and

(iii) Activities that can be, and in fact are, conducted within permitted buildings without material alteration to the external appearance. Temporary outdoor activities involving 100 or more people shall not exceed seven (7) consecutive days in any ninety (90) day period unless approved by Grantee in advance in writing. Notwithstanding any other provision of this easement, no commercial recreational use, except for de minimis commercial recreational uses, shall be allowed on the Property.

- 4. MANAGEMENT OF FOREST.** A forest stewardship plan prepared by a professional forester shall be provided to Grantee prior to any commercial timber harvesting. The primary purposes of the forest management plan shall be to maintain a working forest, improve wildlife habitat, maintain the health of the forest and conserve soil and water. At least thirty (30) days before beginning any commercial timber harvesting, a timber sales contract, pre-harvest plan or other documentation of the intended harvest shall be submitted to Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any commercial forestry or land clearing activity is undertaken. Notwithstanding the foregoing, the following shall be permissible on the Property and shall not constitute commercial timber harvesting:

(i) The cutting and removal of trees for Grantor's, or its assigns, domestic consumption;

(ii) The cutting and removal of trees or brush in connection with the construction of permitted structures, roads, trails and fences and to accommodate other permitted activities hereunder; and

(iii) The cutting and removal of diseased or dead trees or trees, which, were they not removed, would present a hazard to health or safety.

5. GRADING, BLASTING, MINING. Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, stream bank restoration and erosion control pursuant to a government permit, or as required in the construction of permitted buildings, structures, private roads, and underground utilities as permitted in Paragraph 2. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining or drilling for oil or gas on the Property is prohibited. Notwithstanding the foregoing, the removal of surface rocks or boulders for agricultural purposes is permitted.

6. ACCUMULATION OF TRASH. Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.

7. **SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to:

- (i) State the name and/or address of the owners of the Property;
- (ii) Advertise the sale or lease of the Property;
- (iii) Advertise the sale of goods or services produced incidentally to a permitted use of the Property;
- (iv) Provide notice necessary for the protection of the Property;
- (v) Give directions to visitors; or
- (vi) Recognize historic status or participation in a conservation program.

No such sign shall exceed nine square feet in size.

8. **RIPARIAN BUFFER.** To protect water quality of perennial streams on the Property, Grantee covenants and agrees there shall be no plowing, cultivation or other earth disturbing activity in a thirty-five (35) foot buffer strip along each edge of any perennial stream, the “buffer area,” as measured from the top of the stream bank. Within this buffer area there shall be no buildings or other structures constructed, no storage of compost, manure, fertilizers, chemicals, machinery or equipment, and no cultivation or other earth disturbing activity conducted, except as may be reasonably necessary for:

- (i) Stream bank restoration and erosion and surface drainage control pursuant to any required government permit;
- (ii) Fencing along or within the buffer area;

- (iii) Provided the water-quality protection function of the buffer area is not impaired, removal of trees presenting a danger to persons or property and removal of diseased, dead or non-native invasive trees, shrubs or plants;
- (iv) Construction and maintenance of stream crossings which allow for unobstructed water flow and wildlife movement;
- (v) Creation and maintenance of foot or horse trails with unimproved surfaces;
- (vi) Improvement of the viewshed from the dwelling by the minimal harvesting of trees or limbing of the tree canopy; and
- (vii) Limited mowing to control invasive plant species or protect trees and other plants planted in the buffer area.

ARTICLE III – ENFORCEMENT

- 1 RIGHT OF INSPECTION.** Grantor covenants and agrees that representatives or agents of Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this Easement after permission from, or reasonable notice to, the Grantor or the Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to the Grantor or Grantor's representative being given at the earliest practicable time.
- 2. ENFORCEMENT.** The parties agree that monetary damages would not be an adequate remedy for the breach of any terms, conditions and restrictions herein contained. Grantor hereby grants and conveys to Grantee the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right

specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by the court.

3. **NATURAL CAUSES.** Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.
4. **NO PUBLIC RIGHTS.** The parties agree that the Easement does not create, and shall not be construed to create, any rights of the general public to maintain any action for enforcement against Grantor, or their successors or assigns, for any violation of the terms of this Deed.
5. **FAILURE TO ENFORCE.** The failure of Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve Grantor from thereby complying with any such term.

Furthermore, the Grantor hereby waives any defense of laches, estoppel, or prescription.

ARTICLE IV – AMENDMENT

- 1. GRANTEE’S PROPERTY RIGHT.** Grantor covenants and agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.
- 2. EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee covenant and agree that this Easement is perpetual and shall not be extinguished, and acknowledge that extinguishment of the Easement is not permitted by the Open-Space Land Act. Nevertheless, should any attempt be made to extinguish the Easement, any such extinguishment can be made only by judicial proceedings and only if such extinguishment also complies with Virginia Code Section 10.1-1704. In addition, no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 and the provisions of Section 170 of the Internal Revenue Code and the applicable Treasury Regulations. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth in Section 1 above, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. Grantee covenants and agrees

to use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this easement and the Open-Space Land Act.

3. **AMENDMENT.** Grantor and Grantee, or Grantee and the then owner of the Property, may amend or modify the Easement to strengthen its terms, increase protection of the Property's conservation value and natural resources, add to the restricted property, provided that no amendment shall be allowed which affects the Easement's perpetual duration or results in any financial benefit to the Grantor or the then property owner. No amendment or modification shall be effective unless documented in a notarized writing executed by Grantee and the then owner of the Property and recorded among the land records of the Fauquier County, Virginia.

ARTICLE V – DOCUMENTATION

DOCUMENTATION. Documentation retained in the office of Grantee including, but not limited to the baseline documentation report, describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to the donation, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the documentation supplied and contained in the files of Grantee is an accurate representation of the Property.

ARTICLE VI – GENERAL PROVISIONS

1. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances, including but not limited to, any mortgages not subordinated to this Easement.
2. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of Paul McCulla, County Administrator, by authority granted by Grantee's Board, on November 9, 2006.
3. **ASSIGNMENT BY GRANTEE.** Grantee may transfer or convey this Easement to a public body, as the same is defined by the Open-Space Land Act, but only if Grantee conditions such transfer or conveyance on the requirements that;
 - (i) All restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity; and
 - (ii) The transferee agrees not to convert or divert the Property from open-space land uses except as permissible under Section 170 of the Internal Revenue Code, as amended, and under Section 10.1-1704 of the Open-Space Land Act; and
 - (iii) The transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the Internal Revenue Code, as amended, and the applicable Treasury Regulations; and

(iv) The transferee records among the land records where the Easement is recorded an assignment of the Easement and provides written notice of such assignment to the Grantor or the then current owner of the Property.

- 4. NOTICES TO GRANTEE.** Grantor shall notify Grantee in writing at, or prior to, closing on any inter vivos transfer or sale of the Property. Any notices, requests for approval or other communications to Grantee or any notices, responses to requests for approval or other communications to Grantor under any section of this Easement shall be in writing and sent to the following addresses or to such addresses as may hereafter be specified in writing:

Grantee:

Board of Supervisors of Fauquier County
10 Hotel Street
Warrenton, Virginia 20186

Grantor:

Mt. Joy Farm, LP
c/o Clifden, L.L.C., its general partner
attention: Michael J. Manning
P.O. Box 456
Marshall, VA 20116

- 5. INCLUSION OF TERMS IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property.
- 6. CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the forgoing, lawful acts or uses not expressly prohibited by this

Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.

7. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.
8. **ZONING ORDINANCE.** Notwithstanding any other provision of this Easement, Grantee’s Zoning Ordinance shall apply to the Property and shall take precedence over this Easement to the extent that the Zoning Ordinance regulations are more restrictive than the terms of this Easement.
9. **MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

- 10. TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.
- 11. WARRANTIES.** THE COUNTY OF FAUQUIER AND ANY CO-HOLDER MAKE NO EXPRESS OR IMPLIED WARRANTIES REGARDING WHETHER ANY TAX BENEFITS WILL BE AVAILABLE TO GRANTOR FROM THE DONATION OR ANY PARTIAL DONATION OF THIS EASEMENT, NOR WHETHER ANY SUCH TAX BENEFITS MIGHT BE TRANSFERABLE, NOR WHETHER THERE WILL BE ANY MARKET FOR ANY TAX BENEFITS WHICH MIGHT BE TRANSFERABLE, NOR WHETHER THIS DEED OR ANY OTHER FORM OR DOCUMENTATION PREPARED BY THE COUNTY WILL SATISFY ANY STATE OR FEDERAL REQUIREMENT, LAW OR REGULATION RELATED TO TAX CREDITS OR DEDUCTIONS FOR THE DONATION OR PARTIAL DONATION OF THIS EASEMENT.

- 12. RIGHT TO DESIGNATE EASEMENT CO-HOLDER.** Grantee shall have the right, in its sole discretion, now and at any time in the future, to transfer part or all interest it has under this Easement to a public body as the same is defined in Section 10.1-1700 of the Open-Space Land Act. Such transfer shall not require the consent of the Grantor or any trustee under a deed of trust which has been subordinated to this Easement, but shall be subject to the conditions and requirements of subsection 3 of this section (Assignment by Grantee).
- 13. SEVERABILITY.** If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
- 14. ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
- 15. CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.
- 16. RECORDING.** This Easement shall be recorded in the land records office of the Circuit Court of Fauquier County, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

{SIGNATURES AND NOTARIES ARE ON THE FOLLOWING THREE PAGES}

WITNESS the following signature and seal:

CLIFDEN, L.L.C.,
A Virginia limited liability company

By: _____(SEAL)
Michael J. Manning
Member/Manager

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that Michael J. Manning, Member/Manager and authorized
agent of CLIFDEN, L.L.C., personally appeared before me this day and acknowledged
the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____,
2006.

Notary Public

My commission expires: _____(SEAL)

MT. JOY FARM, LIMITED PARTNERSHIP,
a/k/a MT. JOY FARM, L.P.
A Virginia limited partnership
By: Clifden, L.L.C., its general partner

By: _____(SEAL)
Michael J. Manning, its member/manager

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that Michael J. Manning, as member/manager and authorized
agent of MT. JOY FARM, LIMITED PARTNERSHIP, personally appeared before me
this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____,
2006.

Notary Public

My commission expires: _____(SEAL)

Accepted:

BOARD OF SUPERVISORS OF FAUQUIER COUNTY, VIRGINIA
A body corporate and politic

By: _____
Paul McCulla
Its County Administrator

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAUQUIER, TO WIT:

I, _____, a Notary Public for the Commonwealth aforesaid, hereby certify that Paul McCulla, Fauquier County Administrator, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Board of Supervisors of Fauquier County, Virginia.

WITNESS my hand and official seal this _____ day of _____,
2006.

Notary Public

My commission expires: _____ (SEAL)

F:\Users\Randy Parks\WP & data files\Real Estate\EASEMENT.CON\Manning\County Board of Supervisors
Easement Deed 103 acre (12-14-06-Redraft Board Clean Draft).doc